

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

UNITED STATES OF AMERICA

v.

ROBERT D. WHITTINGTON, III.

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5:18-CR-4

**FINDINGS OF FACT AND RECOMMENDATION ON GUILTY PLEA
BEFORE THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(b), this matter again has been referred by the District Court for administration of the guilty plea and allocution under Rule 11 of the Federal Rules of Criminal Procedure.

On October 4, 2018, this cause came before the undersigned United States Magistrate Judge for guilty plea and allocution of the Defendant on Count 1 and Count 2 of the Indictment. Count 1 charges a violation of 18 U.S.C. § 941(g), felon in possession of a firearm. Count 2 charges a violation of 18 U.S.C. § 941(g), felon in possession of ammunition. After conducting said proceeding in the form and manner prescribed by Fed. R. Crim. P. 11, the Court found:

a. That the Defendant, after consultation with counsel of record, has knowingly and voluntarily consented to the administration of the Guilty Plea and Allocution in this cause by a United States Magistrate Judge subject to a final approval and imposition of sentence by the District Court.

b. That the Defendant and the Government have entered into a plea agreement, which has been filed and disclosed in open court pursuant to Fed. R. Crim. P. 11(c)(2) and 11(c)(1)(C).

c. That the Defendant is fully competent and capable of entering an informed plea, that the Defendant is aware of the nature of the charges and the consequences of the plea, and that the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact

containing each of the essential elements of the offense.

A Finding of Fact and Recommendation on Guilty Plea Before the United States Magistrate Judge was filed on October 5, 2018 (doc. no. 102). Thereafter United States District Judge Robert W. Schroeder III rejected the sentence agreed upon in the Rule 11 (c)(1)(C) plea agreement. Defendant, having been advised of his right to withdraw his plea of guilty and proceed to trial, voluntarily chose to maintain his plea of guilty to Count 1 and Count 2 but with a new 11 (c)(1)(C) plea agreement. The only change in the new agreement from the original agreement is the punishment. All other terms remained exactly as stated in the original plea agreement.

On March 26, 2019, the undersigned conducted a proceeding to reaffirm the findings made in the October 5, 2018, Finding of Fact and Recommendation on Guilty Plea Before the United States Magistrate Judge. After conducting said proceeding in the form and manner prescribed by Fed. R. Crim. P. 11, the Court finds:

a. That the Defendant, after consultation with counsel of record, has knowingly and voluntarily consented to the administration of the Guilty Plea and Allocution in this cause by a United States Magistrate Judge subject to a final approval and imposition of sentence by the District Court.

b. That the Defendant and the Government have entered into a plea agreement, which has been filed and disclosed in open court pursuant to Fed. R. Crim. P. 11(c)(2) and 11(c)(1)(C).

c. That the Defendant is fully competent and capable of entering an informed plea, that the Defendant is aware of the nature of the charges and the consequences of the plea, and that the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense.

d. Within fourteen (14) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the undersigned. All parties have waived objections.

IT IS THEREFORE RECOMMENDED that the District Court accept the Plea Agreement and the Guilty Plea of the Defendant, and that ROBERT D. WHITTINGTON, III., should be finally adjudged guilty of the offenses listed above.

SIGNED this 26th day of March, 2019.


CAROLINE M. CRAVEN
UNITED STATES MAGISTRATE JUDGE